

# INFORMATION LETTER

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Publication

NATIONAL CANNERS ASSOCIATION

For Members  
Only

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## Court Upholds 7(c) Exemption For Apple Pomace Processing

The U. S. Supreme Court this week refused to review the decision by the United States Court of Appeals for the Ninth Circuit in the case of *McComb v. Hunt Foods, Inc.*, involving the "first processing" exemption in Section 7(c) of the Fair Labor Standards Act. This action, unless it is later changed by the Supreme Court, makes final the Court of Appeals' decision in this case that the making of apple pomace constitutes "first processing" within the meaning of the Section 7(c) exemption (see INFORMATION LETTER of April 24, p. 182).

The Wage and Hour Administrator in this case alleged that the converting of apple peelings and cores and small whole apples into dried apple pomace was not "first processing" within the Section 7(c) exemption, and sought an injunction to require the defendant to pay overtime for such operations. The defendant contended that this processing of apples into pomace was exempt under Sections 7(c) and 7(b)(3) of the Act. The United States District Court for the Northern District of California held that this operation fell within the "first processing" exemption and refused to issue the injunction. The Court of Appeals for the Ninth Circuit upheld the District Court, adopting several of the arguments cited in the brief filed by the Association as *amicus curiae*. The Administrator then asked the Supreme Court to review the case, and the Supreme Court's refusal to hear the case, unless it reverses its decision, means that the decision by the Court of Appeals becomes final. (Please turn to page 346)

## Canada Ups Fruit Juice Quota

The Canadian government announced this week a change in its import restrictions which will permit increased importations of fruit juices.

Fruit juices will be admitted into Canada during the fourth quarter of this year on a new quota basis—70 percent of the volume received through each Canadian importer during the year July 1, 1946, through June 30, 1947.

## Three of Participating Distributor Organizations Have Named Speakers for 1949 Convention Merchandising Symposium

Speakers representing three organizations from the canned foods distributing trade were designated this week to appear on the symposium on the merchandising of canned foods, which has been scheduled by the N.C.A. Convention Committee as a feature of the Second General Session of the 1949 Canners Convention in Atlantic City, Tuesday, January 18.

### 1948 Canned Pea Pack

The total 1948 pack of green peas amounted to 24,446,054 cases of all sizes, 28 percent below the 33,995,779 cases packed in 1947, the Association's Division of Statistics reports.

On the basis of standard cases of 24/2's the 1948 pack was 23,356,000 as compared with 33,110,000 cases packed in 1947.

The pack report is compiled by sieve sizes, and copies were mailed to all canners packing peas. Comparisons of 1947 and 1948 packs, by States are on page 345.

## Canned Vegetable Demand To Continue in '49, BAE Says

The Bureau of Agricultural Economics reported this week in its outlook on the vegetable situation that "consumer demand for canned vegetables probably will continue strong throughout 1949."

"The total 1948 commercial pack of canned vegetables is expected to be about one-tenth smaller than the 1947 pack, judging from estimated production for processing," the report said.

"Total stocks of major canned vegetables held by commercial canners and wholesale distributors are lower than a year earlier. By the end of the 1948-49 pack year they are expected to be still further reduced relative to a year earlier. There are no burdensome surpluses in canned vegetables evident at this time. (Please turn to page 345)

With this issue, canners receive a postcard invitation to attend the 42nd Annual Canners Convention in Atlantic City, January 14-20, 1949. The postcard should be filled out and mailed to the Canning Machinery & Supplies Association.

John P. Houck of M. W. Houck & Bro., New York City, was named to represent the National Food Brokers Association by Jack L. Gentry, national chairman.

J. R. Peachey, president, Loblaw Groceries, Inc., Buffalo, N. Y., was designated by Sidney R. Rabb, president, Super Market Institute, Inc., to speak for that organization.

Charles S. Ragland of C. B. Ragland Co., Nashville, Tenn., was selected by W. A. Livingston, president, to represent the U. S. Wholesale Grocers Association.

Each of the various distributing interests was invited to designate the best-informed and most competent member to speak for about ten minutes on canned foods merchandising, to present a practical picture of that important topic.

Two other organizations have indicated that they will select speakers to round out the program for the symposium. These are the National-American Wholesale Grocers Association and the National Association of Food Chains. (Please turn to p. 346)

## NSRB Food Committee Meets

The ten-man "Food Committee" of food industry representatives met this week with Chapin Weed, newly-appointed head of the Food Division of the National Security Resources Board, to begin a study of how to mobilize the nation's food resources in event of war.

Formerly with the Grand Union Tea Co., Mr. Weed served both with the Army Quartermaster Corps and the War Production Board during the

(Please turn to page 345)

## FOOD AND DRUG

### THE PROBLEMS OF A FOOD INDUSTRY LAWYER

An article by Association counsel about the unique position of lawyers who advise food manufacturers, which appeared in the September issue of *Food Drug Cosmetic Law Quarterly*, points up the value to a trade group of having expert legal counsel with a correlated knowledge of industrial problems in this special field.

The article was written by H. Thomas Austern on invitation from the *Quarterly*, and was intended for reading by lawyers. Salient portions are quoted:

"Those lawyers . . . who are privileged regularly to advise food manufacturers, as house counsel, trade association counsel, or general counsel, are in many respects in a unique position. In a recent issue of the *Quarterly*, Associate Commissioner (C. W.) Crawford called attention to the unusual responsibility the nation ascribes to those who produce and handle its life-sustaining foods. This underlying concept of public trust is an implicit common denominator in every legal question on which a food manufacturer seeks legal advice.

#### "Scope of Legal Questions

"Typically the client food manufacturer will in the first instance be concerned with the agricultural controls affecting his raw material. His counsel will be called upon to have a working knowledge of Federal agricultural operations—a statutory edifice of large proportions—and the maze of administrative activities by which they are executed. These range widely from the broad coverage of the Agricultural Marketing Act, the Soil Conservation and Domestic Allotments Act, and like statutes, to the particularized impact of the Sugar Act of 1948, the Perishable Agricultural Commodities Act, the Plant Quarantine Act and the Insect Pest Act, arbitrarily to select a few of a host of enactments.

"Particularization may derive also from the specific raw material, be it grain subject to Federal commodities exchange control, or fish subject to conservation statute and regulation. Even if the agricultural commodity utilized is not directly controlled through price support or production regulation, the program on a related commodity may inevitably affect the price or supply of the one used. In short, food processors are necessarily concerned with this legal web of agricultural and natural resource controls, and seek guidance or extrication from their lawyers.

"As a manufacturer, the food processor is in addition subject to most

state and Federal legal controls affecting industrial operations. While there are in many instances particular exemptions, basically the Fair Labor Standards Act, State Unemployment relief statutes, Workmen's Compensation Acts, Social Security enactments, and most other familiar statutes read on food manufacturing. Inescapably, the food industry lawyer must know his way around in the statutory pattern, social objectives, and administrative techniques which they embody. But again the list has an accompanying train of special questions. Water Pollution Acts relate to as difficult disposal problems as any industry; there are many state controls reading on food manufacture alone; and many detailed local laws founded on the difference between an ordinary factory and a mechanized, large-scale kitchen.

"In the distribution of packaged foods—a field in which the container art has made the greatest strides—practically all conventional, and inevitably a great many uncommon legal questions are encountered. Few have forgotten that the Robinson-Patman Act emerged primarily from the food industry, that its brokerage and advertising allowance sections were largely written to remedy distribution maladjustments in that industry, and that many of the most intriguing questions of the validity of delivered pricing can be there found. Again the list includes not only the usual problems of transportation, warehousing, and selling—along with patents, trademarks, and the antitrust laws as they operate in this politically sensitive area—but also frequent subtle forms of interstate barriers to products sold nationwide. There are the familiar oleomargarine taxes, the filled milk acts, and the state beverage registration and taxing statutes. The vital consumer interest in food underlies many local labeling requirements and municipal weight and packaging regulations seldom encountered in other industries.

"Another characteristic is that for food products these varied controls interlock in peculiar form. Those experienced in the field are always alert to this phenomenon: state laws incorporate *mutatis mutandis* Federal regulations; trade-marks for meat products can be registered only after label certification by the Federal Bureau of Animal Industry; a regulation that fish must be canned within a specified time encounters another rule that a catch of fish cannot be dumped; compliance with a state statute or municipal ordinance may mean violation of a Federal marketing control order. Only the widest interchange of experience

with these legal quirks can mollify the lot of the food industry lawyer.

#### "Embracing Coverage of the Federal Food, Drug and Cosmetic Act

" . . . The food sections of that law (Federal Food, Drug and Cosmetic Act) run like a thread through every activity from harvest to grocery shelf to consumer. Without seeking to evoke argument, it might be suggested that here the line between interstate and intrastate activity almost vanishes, or for the constitutional lawyer they become 'inextricably intermingled.' Factory inspection, plant sanitation, product composition and identity, occasionally even methods of manufacture, packaging, labeling, proper shipment, possible deterioration in transit, representations concerning the product, minimum legal quality, compliance with correlated state statutes—all of these may come into question in the administration of this Act.

"The requirement of disclosure in food standardization proceedings is directly related to the adequacy of patents for newly developed food products and processes. Compliance with the Food, Drug, and Cosmetic Act affects not only the drafting of sales contracts and their arbitration, but also governs sales to state and Federal agencies. The respective jurisdiction of the Food and Drug Administration and the Federal Trade Commission over advertising raises questions which drive deeply into sound policy and procedure in administrative law. What is a registrable trademark may not always be an acceptable label under the Food, Drug, and Cosmetic Act; and sustained advertising may be frustrated where a product is not recognized but instead outlawed in a food standard."

### Use of Frozen Products In Canned Foods

The Association was asked recently to ascertain whether the use of frozen products, e.g., vegetables, as ingredients in canned foods should be indicated on the label. It was learned informally that the Food and Drug Administration has given some consideration to this question and that its attitude is as follows:

Each case should be decided on the facts. If in fact the original freezing did not result in an adverse effect on the finished product, then the freezing is to be regarded as merely an incidental step in the preparation of that ingredient, and no label indication of the freezing is needed.

On the other hand, if the freezing did have an adverse effect on the finished canned product, then the label should show that the latter was prepared from a frozen product.

## STATISTICS

### Citrus Processed in 1947-48 Up 11 Percent over Year Ago

Although citrus production declined slightly below the previous crop year, the amount of citrus processed during 1947-48 increased 11 percent, according to a report on citrus fruits issued by the Bureau of Agricultural Economics.

Total U. S. citrus production during 1946-47 amounted to 115,901,000 boxes, as compared with the 112,746,000 boxes harvested in 1947-48, according to BAE. The quantity processed during these two periods increased from 31,634,000 to 40,330,000 boxes.

The 1947-48 production and totals processed, by States, were reported by BAE as follows:

#### Oranges (including tangerines)

State	Harvested Production (In thousand boxes)	Total Processed
Arizona.....	774	182
California.....	44,672	8,819
Florida.....	61,800	31,020
Louisiana.....	300	10
Texas.....	5,200	299
U. S. Total.....	112,746	40,330

#### Grapefruit

State	Harvested Production (In thousand boxes)	Total Processed
Arizona.....	2,036	790
California.....	2,858	681
Florida.....	29,300	19,451
Texas.....	20,900	8,661
U. S. Total.....	55,114	29,583

### Pack of Green Peas in Cases All Sizes for 1947 and 1948

States	1947 Pack		1948 Pack	
	Alaska Actual Cases	Sweets	Alaska Actual Cases	Sweets
Northeast:				
New York & Maine.....		1,007,696	33,492	1,474,525
Middle-Atlantic:				
Maryland.....	804,838	510,500	581,841	309,178
Delaware and New Jersey.....	45,617	13,823	40,765	57,920
Pennsylvania.....	320,346	744,780	132,182	581,334
Other States.....	22,900	14,452	16,121	20,250
Mid-West:				
Ohio.....	114,694	30,964	125,362	30,029
Indiana.....	225,237	16,837	196,798	14,693
Illinois.....	312,362	1,950,474	358,549	1,868,632
Michigan.....	8,236	302,917	8,292	441,280
Wisconsin.....	4,717,107	8,631,894	2,980,607	4,370,424
Minnesota.....	943,300	2,203,811	812,054	1,792,667
Other States.....	264,297	144,102	204,627	233,137
West:				
Montana and Wyoming.....		344,315		184,846
Idaho and Utah.....	27,656	2,445,689		1,227,705
Washington and Oregon.....	186,913	7,132,717	332,527	5,714,623
Other States.....	23,820	483,750	2,261	300,363
Total.....	8,017,329	25,978,430	5,825,448	18,620,606

This report is based on actual reports of canners packing peas, together with estimates for five firms whose reports were not received.

## Invitations to Bid

Quartermaster Purchasing Office—111 East 16th Street, New York 3, N. Y.; 1819 West Pershing Road, Chicago 9, Ill.; Oakland Army Base, Oakland 14, Calif. (Western Branch).

Veterans Administration—Procurement Division, Veterans Administration Building, Washington 25, D. C.

The Walsh-Healey Public Contracts Act will apply to all operations performed after the date of notice of award if the total value of a contract is \$10,000 or over.

The Army has invited sealed bids to furnish the following:

CANNED VEGETABLES—192,765 No. 2 cans of red kidney beans; 6,960 No. 2 cans of Brussels sprouts; and 10,128 No. 2 cans of mixed vegetables. Bids due at New York under serial No. QM-30-280-49-356 by Oct. 25.

TOMATO JUICE—2,500 dozen No. 10 or 5.218 dozen 46-oz. cans. Bids due at Chicago under serial No. QM-11-183-49-442 by Oct. 26.

TOMATO JUICE—104,383 dozen 46-oz. cans. Bids due at Chicago under serial No. QM-11-183-49-447 by Oct. 26.

CANNED FIGS—160,222 dozen No. 2½ cans. Bids due at Oakland under serial No. QM-04-493-49-166 by Oct. 26.

CANNED CHICKEN AND VEGETABLES—1,507,488 12-oz. cans. Bids due at Chicago under serial No. QM-11-183-49-477 by Oct. 26.

CANNED SWEET CORN—7,797 dozen No. 10 or 41,324 dozen No. 2 cans. Bids due at Chicago under serial No. QM-11-183-49-449 by Oct. 27.

CANNED CARROTS—171,534 dozen No. 2 cans. Bids due at Chicago under serial No. QM-11-183-49-473 by Oct. 27.

CANNED BLUEBERRIES (



## PUBLICITY

### Canned Foods Price Publicity

Publicity pointing to the favorable price position of canned foods is known to have been published in newspapers in half the 48 States and having a total circulation of 4,436,056.

Clippings received this week include a number from newspapers which had published price stories previously. These were:

*Northwest Arkansas Times* (circulation 8,200), sent in by F. R. Spurgin of the Ozark Cannery Association;

*Courier-Gazette* (3,499) of Newark, N. Y., sent in by Edgett-Burnham Co. of Newark;

*Times-Republican* (12,268) of Marshalltown, Iowa, home of the Marshall Canning Co., which said in an editorial that the increased consumption of canned foods in recent years can be explained by the greater value available to consumers when they buy canned foods;

*Sun-Commercial* (13,522) of Vincennes, Ind., sent in by the Vincennes Packing Corp. of Vincennes;

*Sentinel-Leader* (1,850) of Sparta, Mich., sent in by The Larsen Co., Kent City, Mich.

Each of these papers reproduced the illustration entitled "Market Basket Bargain."

Canners also sent in clippings from the following:

*Campbell Press* (812) of Campbell, Calif., from the Mission Valley Canning Co., Inc.;

*Register-Guard* (24,615) of Eugene, Ore., sent in by Eugene Fruit Growers Association;

These papers utilized "Market Basket Bargain" and also reproduced "A Story Worth Repeating!" in full.

Clippings from the following papers also have been received:

*Herald* (800) of Victor, N. Y., from W. H. Sherman of the Association of New York State Cannerymen, Inc.;

*Pulaski News*, Pulaski, Wis., sent in by the Pulaski Canning Co., Inc., of Pulaski;

The *Boston Traveler* (244,543) utilized the N.C.A. price release in a homemakers' column signed by Marjorie Mills.

Also, clippings have been received from the *Lexington, Ky. Leader* (23,652); *Brazil, Ind. Times* (4,960); *Wilkes-Barre, Pa., Times-Leader-News* (56,112); *Canon City, Colo.,*

*Record* (3,647); and *Eau Claire, Wis., Leader* (13,072).

*Canadian Food Industries*, published monthly in Gardenvale, Quebec, noted on "The Editor's Page" in the October issue:

"The National Cannery Association in the United States is to be congratulated for its continued efforts to direct the attention of the consumer to the lower price of canned fruits and vegetables. In a comparison of today's prices with those of prewar, the N.C.A. points out that the Federal Government's Bureau of Labor Statistics listed canned fruits and vegetables as the least expensive of all foods. The price index of these canned products was 157.7. Sugar, next best in the showing, was 170.9.

"It is suggested that the industry in Canada might take similar steps to keep the consuming public continuously aware of the advantages of canned products."

### Extra Distribution for Letter

The membership of the National-American Wholesale Grocers Association has received copies of the October 2 issue of the INFORMATION LETTER, containing the announcement of Harold E. Stassen's scheduled address at the 1949 Cannery Convention, the price publicity based on Bureau of Labor Statistics figures, and the background information on the probable effects of the Supreme Court's decision requiring f.o.b. pricing under certain conditions. Copies of this issue were requested from the National Cannery Association and distributed by NAWGA because it was felt that each of these articles would be valuable information for its members.

## PERSONNEL

### Stokely Promotes L. J. Noonan

H. F. Krimendahl, president of Stokely-Van Camp, Inc., announces the appointment of L. J. Noonan as vice president of the Company. Mr. Noonan has been with Stokely-Van Camp since 1930; first, as division manager for the West Coast; then sales promotion manager; sales manager of Van Camp's; and since February of this year, general sales manager for both the Stokely and Van Camp divisions, a position he still holds as vice president.

### Court Upholds 7(c) Exemption

(Concluded from page 343)

The United States Court of Appeals for the Third Circuit held last spring in the case of *McComb v. C. H. Musselman Co.* that the drying of apple pomace constitutes "first processing" under the Section 7(c) exemption of the Act. That decision affirmed an opinion handed down in the fall of 1947 in which the Association filed a brief *amicus curiae* (see INFORMATION LETTER of May 8, p. 196).

### Canned Foods Merchandising

(Concluded from page 343)

The N.C.A. also is completing arrangements for the assignment of a speaker.

Announcement of speakers subsequently assigned will be made as soon as the selections have been reported to the Association.

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